limited powers conferred by the Constitution, cannot, under the general taxing power with which it is intrusted, appropriate money for other than public purposes.

What is a public purpose is primarily for the legislature to determine, and the courts will not interfere unless the decision of the legislature is wrong beyond a reasonable doubt. *Speer* v. *School Directors, etc.*, 50 Pa. St. 150. On the other hand, it is clear that the benefit to the public must be direct, not merely incidental. Accordingly, the promotion of manufactures is not a public purpose. *Loan Assn.* v. *Topeka, supra*. Tested by this rule, a sugar bounty would not seem to be for a public purpose; and it has been pronounced in a *dictum* to be unconstitutional on that account. *Miles Planting Co.* v. *Carlisle*, 5 App. D. C. 138. In Michigan, a state sugar bounty has been held void. *Michigan Sugar Co.* v. *Auditor-General*, 124 Mich. 674.

The validity of a ship subsidy, however, involves different considerations. It is well settled law that taxation for a railroad connecting a community with some other region is for a public purpose, though the road be outside the community to be taxed, and even outside the state. *Railroad Co.* v. *County of Otoe*, 16 Wall. (U. S. Sup. Ct.) 667. The analogy between such a railroad and foreign-going shipping seems close, especially in view of the fact that the lines of vessels connecting this country with others are, like railroads, common carriers. *Liverpool, etc., Co.* v. *Phenix Ins. Co.*, 129 U. S. 397. Furthermore, in time of war a merchant marine is indispensable as an auxiliary to the navy. On the whole, there may well be room for an honest doubt as to whether the building up of a merchant marine is not a public purpose, and such doubt, if it exists, must be resolved in favor of the act of Congress.

If it be granted that appropriations are unconstitutional, the author's conclusion that the United States may recover back any sums paid out under them seems to follow. The government is bound by the acts of its officers only when they are acting within their rightful authority. Consequently it is held that money paid out by them under a misconstruction of law is recoverable. *United States* v. *Saunders*, 79 Fed. Rep. 407. See also *Wisconsin Central R. R. Co.* v. *United States*, 164 U. S. 190. The same rule should apply to payments made under an unconstitutional law.

The position of the author that Congress cannot reimburse those who may sustain loss by relying on an unconstitutional law is consciously taken in the face of the direct decision of the Supreme Court to the contrary. *United States* v. *Realty Co.*, 163 U. S. 427. The court there held that irrespective of the constitutionality of the law those who had acted in reliance upon it had such a moral or honorary claim that Congress might lawfully appropriate money for them. The arguments against the view taken by the court were fully presented by counsel, and it seems extremely unlikely that the court will overrule its decision.

DOES AN AGENT IMPLIEDLY WARRANT HIS AUTHORITY? — The recent case of *Oliver* v. *The Bank of England*, [1902] 1 Ch. 610, has called forth an article in The Law Quarterly Review in which the authority of that case is discussed under the title *Some Recent Developments of the Doctrine of Collen* v. *Wright*, by Francis R. Y. Radcliffe, 18 L. Quart. Rev. 364 (Oct., 1902). *Collen* v. *Wright*, it will be remembered, is the English case in which it was first authoritatively laid down that an agent innocently acting without authority and inducing the plaintiff to enter into a contract for an existing principal, impliedly warrants his agency. *Collen* v. *Wright*, 8 E. & B. 647. Since the court there professed to find consideration for the warranty in the plaintiff's consent to make the contract, the writer in The Law Quarterly Review contends that the doctrine cannot properly be extended to cases in which the professing agent induces an act other than entering into a contract, and that *Oliver* v. *The Bank of England* is consequently wrong. In that case a broker, thinking himself an agent under a power of attorney which proved to be a forgery, demanded that the Bank of England allow him to transfer some consols; and this the Bank did,

to its loss. The court allowed a recovery against the broker. The article contends that since, if the power had been good, the Bank would have been already bound by law to transfer the consols, there could be no consideration. But is this conclusion justified? When the power came before the agent and the Bank, neither of them knew whether it was good or not, and from their point of view it might turn out either way. Would not a warranty be supported therefore by ample consideration, the detriment incurred by the Bank being the risk that the result of the transfer might be contrary to its interests? Contracts on such consideration are sustained. *Callisher* v. *Bischoffsheim*, L. R. 5 Q. B. 449; *Seward* v. *Mitchell*, 1 Cold. (Tenn.) 87. Of course the reply is obvious that the parties never intend to make any such contract. But neither did they so intend in *Collen* v. *Wright*. To say that they did is a fiction, and has been so called. See dissenting opinion of Cockburn, C. J., *Collen* v. *Wright*, *supra*; HUFFCUT, AGENCY, 231. If it is a fiction, there is no reason why a court may not apply it as bravely to the one case as to the other, to *Oliver* v. *The Bank of England* as bravely as to *Collen* v. *Wright*.

Obviously the fiction of warranty confuses the matter. It is desirable to ascertain clearly the real basis on which these cases must rest. Since the case of *Peek* v. *Derry* in the House of Lords the only ground on which they can be put is that of business convenience and necessity. That case decided that one who suffers by acting in reliance on a merely negligent misrepresentation cannot recover. *Peek* v. *Derry*, L. R. 14 App. Cas. 337. *A fortiori* he could not recover on a non-negligent misrepresentation. We therefore have to recognize that in England the *Collen* v. *Wright* cases are an exception to *Peek* v. *Derry*, in that they allow a recovery where an agent makes a misrepresentation as to his authority. The ground of business necessity suggested as a basis for the exception is a very strong one. Business has to be conducted through agents. The agent usually can investigate his authority and find out with considerable certainty whether or not it exists in a particular case, while the person with whom he deals very seldom can. As a consequence it is, as a matter of fact, the custom of business men to take agents largely upon trust. There are peculiar reasons therefore why an agent should be viewed differently from others and held liable for even an innocent and non-negligent misrepresentation as to a fact which it is especially within his province to know, and which others as a practical matter are unable to investigate. It is both just and necessary for the safe conduct of business. These arguments would seem ample to justify an exception with regard to these cases. The exception being granted, it of course includes *Oliver* v. *The Bank of England*. That case appears to be rightly decided.

It is interesting to note that where the agent acquaints the person with whom he deals of the doubt as to his authority he is not held liable. *Lilly* v. *Smales*, [1892] 1 Q. B. 456.

UNRECORDED TRANSFER OF STOCK. — A recent article discusses the respective rights of the creditor who has attached the stock of his debtor upon the books of the corporation and the prior purchaser who has failed to obtain a transfer upon the books. *Certificates of Stock: Relative Rights of an Attachment Creditor and a Prior Unrecorded Transferee*, by L. L. Leonard, 55 Central L. J. 243 (Sept. 26, 1902) The author considers the creditor entitled to preference on strict legal principle, but admits that the practical demands of business will ultimately cause the transferee to be given priority. Mr. Leonard's argument seems somewhat weakened by the fact that his cases are often inaccurately cited; in several instances also they do not turn on the point for which he cites them.

It seems conceded that apart from the usual regulation by statute or by the charter or the by-laws of the corporation the legal title to stock passes to the transferee by the act of sale and the creditor of the transferor can thereafter have no claim upon it. *Boston, etc., Association* v. *Cory*, 129 Mass. 435; LOWELL, TRANSFER OF STOCK, § 80. Statutory or charter provisions are generally found, however, which provide that stock shall be transferable only on the